

MT LEGISLATIVE HISTORY

Chapter 549 1989

Bill H _____ S 42

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Taxation

Hearing Date(s) Mar 10 ☒ C

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Date Out Mar 10 ☒ C

Jan 18 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 SENATE BILL NO. 42
2 INTRODUCED BY ECK
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD
7 SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS;
8 PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON
9 TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO
10 NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES
11 FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY
12 SUPPORT ORDERS; AND AMENDING SECTIONS 40-5-201 THROUGH
13 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241
14 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND
15 40-5-257, MCA."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 40-5-201, MCA, is amended to read:

19 "40-5-201. Definitions. As used in this part, the
20 following definitions apply:

21 (1) "Child" or--"dependent--child" means any person
22 under 18 years of age who is not otherwise emancipated,
23 self-supporting, married, or a member of the armed forces of
24 the United States and for whom:

25 (a) support rights are assigned under 53-2-613;

1 (b) a public assistance payment has been made;
2 (c) child support enforcement services are being
3 provided by the department under 40-5-203; or
4 (d) a referral for interstate services is received by
5 the department, whether under the Revised Uniform Reciprocal
6 Enforcement of Support Act or an interstate action request
7 by a Title IV-D agency of another state.

8 (2) "Department" means the department of revenue.

9 (3) "Director" means the director of the department of
10 revenue or his authorized representative.

11 {4}--"Disposable--earnings"--means--that--part--of--the
12 earnings--of--any--individual--remaining--after--the--deduction
13 from--those--earnings--of--any--amount--required--by--law--to--be
14 withheld:

15 {5}--"District-court-order"--means--any--judgment--or--order
16 of--the--district--court--of--the--state--of--Montana--or--an--order--of
17 a---court---of---appropriate---jurisdiction---of---another---state
18 ordering--payment--of--a--set--or--determinable--amount--of---support
19 money:

20 {6}--"Earnings"--means--compensation--paid--or--payable--for
21 personal--services,--whether--denominated--as--wages,--salary,
22 commission,--bonus,--or--otherwise,--and--specifically--includes
23 periodic--payments--under--pension--or--retirement--programs--or
24 insurance--policies--of--any--type,--"Earnings"--specifically
25 includes--all--gain--derived--from--capital,--labor,--or--both

combined, including profit gained through sale or conversion of capital assets.

(4) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(5) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(6) "Obligor" means a person, including an alleged father, who owes a duty of support.

(7) "Parent" means the natural or adoptive parent of a child.

(8) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(9) "Support debt" or "support obligation" means the amount created by:

(a) the sum created by the failure to provide support to a dependent child under the laws of this or any other state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support a support order; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 47, part 2, of this title when a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(10) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state with a hearing function and process similar to those of the

department under this part.

(11) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 2. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever--the department--of--social--and--rehabilitation--services--or--the department--of--family--services--receives--an--application--for public--assistance--on--behalf--of--a--child--and--it--appears--to--the satisfaction--of--that--department--that--the--child--has--been abandoned--by--his--parents;--the--child--and--one--parent--have--been abandoned--by--the--other--parent;--or--the--parent--or--other--person who--has--a--responsibility--for--the--care;--support;--or maintenance--of--such--child--has--failed--or--neglected--to--give proper--care--or--support--to--the--child;--the--department--of social--and--rehabilitation--services--or--the--department--of family--services--shall--promptly--refer--the--matter--to--the department--of--revenue--for--action The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, or and other appropriate state and federal statutes of this state to insure ensure that the parent or other person responsible pays for the care, support, or maintenance of the dependent a child if

the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, if the department is providing child support enforcement services for a child under this part, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child obligee to recover support due to that the child or obligee from any person the obligor. and The department may bring and maintain the action either in the department's its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child and

1 ~~representing--support--payments-for-children-in-whose-behalf~~
2 ~~public-assistance-has-been-previously-paid.~~

3 (4) For purposes of prosecuting any civil action
4 ~~pursuant--to--this--part,~~ the department is a real party in
5 ~~interest upon-the-payment-of--public--assistance~~ if it is
6 providing child support enforcement services under this
7 part. No obligee ~~shall~~ may act to prejudice the rights of
8 the department ~~after-the-receipt-of-public-assistance~~ while
9 such services are being provided.

10 (5) ~~No~~ If child support enforcement services are being
11 or have been provided under this part, no agreement between
12 any obligee and any obligor either relieving an obligor of
13 any duty of support or purporting to settle past, present,
14 or future support obligations either as settlement or
15 prepayment may act to reduce or terminate any rights of the
16 department to recover from ~~that~~ the obligor for support debt
17 provided unless the department has consented to the
18 agreement in writing.

19 (6) The department may petition a court or an
20 administrative agency for modification of any ~~court~~ order on
21 the same basis as a party to that action ~~would-have-been~~ is
22 entitled to do.

23 (7) The department ~~shall-be~~ is subrogated to the right
24 of the child ~~or-children-or-person-having-the-care,-custody,~~
25 ~~and-control-of-the-child-or-children~~ or obligee to maintain

1 any civil action or execute any administrative remedy
2 existing available under the laws of the this or any other
3 state to-obtain-reimbursement-of-money-thus-spent to collect
4 a support debt. This right of subrogation is in addition to
5 and independent of the assignment under 53-2-613 and the
6 support debt created by 40-5-221.

7 (8) ~~If-a-district-court-orders-an-amount-of-support-to~~
8 ~~be--paid--by--a--responsible-parent,-the-department-shall-be~~
9 ~~subrogated-to-the-debt-created-by-the-order--and--the--money~~
10 ~~judgment---shall--be--determined--to--be--in--favor--of--the~~
11 ~~department.-This-subrogation-applies-both-to-~~

12 ~~(a)--the-lesser-of-the-amount-paid-by-the-department-or~~
13 ~~social-and-rehabilitation--services--or--the--department--or~~
14 ~~family--services--in-public-assistance-to-or-for-the-benefit~~
15 ~~of-a-dependent-child-or-children-of-the--responsible--parent~~
16 ~~or--the--amount-of-support-contained-in-the-court-order,-and~~

17 ~~(b)--to-any-amount-allocated--to--the--benefit--of--the~~
18 ~~children--on--the--basis--of--providing--necessities-for-the~~
19 ~~caretaker-of-the-children; If public assistance is being or~~
20 ~~has been paid, the department is subrogated to the debt~~
21 ~~created by a support order and any money judgment is~~
22 ~~considered to be in favor of the department. This~~
23 ~~subrogation is an addition to any assignment made under~~
24 ~~53-2-613 and applies to the lesser of:~~

25 (a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 3. Section 40-5-203, MCA, is amended to read:

"40-5-203. Support Child support enforcement services.

(1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards--necessary--to--limit--applications--for--support enforcement---services--These--standards--shall--take--into account--the--earnings,--income,--and--other--resources--already available---to---support--the--person--for--whom--a--support obligation--exists the terms and conditions by which services are provided under this section.

(3) The department may not charge the applicant a fee as compensation for services rendered in establishment of or enforcement of support obligations. However, the department

may charge a fee to the person--from--whom--the--support--is being--collected obligor. This fee must be in addition to the support payment. The department shall by rule establish reasonable fees commensurate with the cost of enforcement support services to be paid by the person--from--whom--the support--is--being--collected obligor. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the person--from--whom--the--support--is--being collected obligor makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion. The department may, upon a showing of necessity, waive or defer any such fee.

(4) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department shall continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(5) The department may terminate services under this section only if it:

1 (a) receives a written request from the obligee for
2 termination of services;

3 (b) receives notice that the child is receiving public
4 assistance; or

5 (c) determines that an obligee has violated any term
6 or condition set by the department for an applicant under
7 this section."

8 **Section 4.** Section 40-5-204, MCA, is amended to read:

9 **"40-5-204. Cooperation by person--having--custody--of**
10 **child obligee. Any--person--having--the--care, custody, or**
11 **control of any dependent child or children--shall--cooperate**
12 **with--the--department--in--establishing--the--paternity--of--such**
13 **child--and--obtaining--support--payments** An obligee shall
14 cooperate with the department in:

15 (1) identifying and locating the obligor;

16 (2) establishing the paternity of a child;

17 (3) obtaining support or any other payments due the
18 obligee and child; and

19 (4) obtaining reimbursement for previously paid public
20 assistance, if any."

21 **Section 5.** Section 40-5-205, MCA, is amended to read:

22 **"40-5-205. Payment of support money collected to**
23 **support enforcement and collections unit -- notice. If**
24 **written--notice--by--the--department--is--given** the department
25 gives written notice to the responsible person--or obligor,

1 to the clerk of the court, if--appropriate, or to an
2 administrative agency that issued a support order, that the
3 children child for whom a support obligation order exists
4 are is receiving public--assistance services from the
5 department, then any support money paid-by-the-person-or
6 persons--responsible-for-support-as-a-result--of--any--action
7 shall---be---paid---through---the--support--enforcement--and
8 collections-unit-of-the-department-of-revenue must be paid
9 to the department."

10 **Section 6.** Section 40-5-206, MCA, is amended to read:

11 **"40-5-206. Central unit for information and**
12 **administration -- cooperation enjoined -- availability of**
13 **records. (1) The department shall establish a central unit**
14 **to serve as a registry for the receipt of information, for**
15 **answering interstate inquiries concerning deserting parents,**
16 **to coordinate and supervise departmental activities in**
17 **relation to deserting parents, and to assure effective**
18 **cooperation with law enforcement agencies.**

19 **(2) To--effectuate--the--purposes--of--this--section,--the**
20 **director--may--request--from--state, county, and local agencies**
21 **all--information--and--assistance--as--authorized--by--this--part.**
22 **All--state,--county,--and--city--agencies,--officers,--and**
23 **employees--shall--cooperate--in--the--location--of--parents--who**
24 **have--abandoned--or--deserted--or--are--failing--to--support**
25 **children--receiving--public--assistance--and--shall--on--request**

~~supply---the---department---with---all---information---available
relative-to---the---location,---income,---and---property---of---the
parents. If services are provided to a child under this
part, the department may request and all state, county, and
city agencies, officers, and employees must provide on
request any information concerning the location, income, and
assets of an obligor.~~

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 7. Section 40-5-207, MCA, is amended to read:

"40-5-207. Department authorized to enforce maintenance awards. When If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse and the former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part."

Section 8. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support obligation enforcement. (1)

In ~~all~~-proceedings any proceeding initiated pursuant to this part, the department shall require ~~parents-obligated-to-pay~~ child-support the obligor to secure and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such health insurance is available through ~~their~~ the obligor's employment. However, if a ~~court-of-competent-jurisdiction-has-entered-an~~ support order establishing-a-current-support-obligation--and ~~has--ordered--the--obligated--parent--to-secure-and-maintain~~ health-insurance-coverage-for-each-dependent-child, has been ~~entered that also orders the obligor to secure and maintain~~ health insurance coverage for the child, the department shall enforce the obligation as ordered ~~by-the-court.~~

(2) If the department determines that an ~~obligated~~ parent obligor has failed to maintain health insurance coverage required by the a support order of--a--court--of ~~competent-jurisdiction-or-an-administrative-agency-empowered~~ to--enter--such--order, it may issue a notice commanding the parent obligor to appear at a hearing held by the department and show cause why a sum of not more than \$100 should not be assessed for each month health insurance coverage is not secured or maintained. If the department finds, after hearing or the obligor's failure to appear, that the obligor ~~has not secured or maintained~~ health insurance coverage ~~has not-been-secured-or-maintained~~ in accordance with the court

1 ~~or--administrative~~ support order, the department may assess
2 against the ~~obligated-parent~~ obligor not more than \$100 for
3 each month health insurance coverage has not been secured or
4 maintained. Such amounts may be enforced by warrant for
5 distraint provided for in 40-5-241.

6 (3) ~~Whenever-an-obligated-parent~~ If an obligor who has
7 been served with notice under this section appears before
8 the department and shows that health insurance coverage in
9 accordance with the ~~court-or-administrative~~ support order:

10 (a) has been secured and maintained continuously since
11 the date of the order, the department shall dismiss the
12 pending action; or

13 (b) has not been secured or continuously maintained
14 but such coverage is presently in effect, the department
15 shall suspend the pending action for a period of 12 months.

16 (4) At the end of the suspension period, the
17 department may schedule a hearing. If at this hearing the
18 department finds that during the suspension period health
19 insurance coverage:

20 (a) has been continuously maintained, the department
21 shall dismiss the pending action and the ~~obligated-parent~~
22 obligor will not be assessed under this section; or

23 (b) has not been continuously maintained, the
24 department may enter a final order requiring the ~~obligated~~
25 parent obligor to pay the sum assessed in accordance with

1 this section for each month coverage was not maintained.

2 (5) Any amounts collected pursuant to this section
3 must be returned to the general fund to help offset
4 expenditures for medicaid."

5 **Section 9.** Section 40-5-213, MCA, is amended to read:

6 "40-5-213. Financial statements by parent---whose
7 absence--is--basis--of--application--for--public--assistance
8 obligor -- penalty. (1) Any--parent--in--the--state--whose
9 absence--is--the-basis--upon--which--an--application--is--filed--for
10 public--assistance--on--behalf--of--a--child--shall If the
11 department is providing child support enforcement services
12 under this part and has reasonable cause to believe that a
13 support obligation is owed, an obligor, upon written
14 request, shall complete a statement, under oath, stating the
15 obligor's:

16 (a) of his current monthly income;

17 (b) his total income over the past 36 months;

18 (c) the number of dependents for whom he the obligor
19 is providing support;

20 (d) the amount he the obligor is contributing
21 regularly toward the support of all--children--for--whom
22 application--for--such--assistance--is--made, a child for whom
23 the department is providing services;

24 (e) his current monthly living expenses; and

25 (f) all other information pertinent to determining his

ability-to-support-his--children--The--statement--shall--be
 provided-upon-a-demand-made-by-the-department--if-assistance
 based-upon--the--application--is--granted--on-behalf-of-the
 child, additional-statements-shall-be-filed-as--required--by
 the-department-until-the-child-is-no-longer-receiving-public
 assistance the obligor's financial condition.

(2) The department may require additional financial
 statements from the obligor during the period the department
 is providing services to the child.

†2†(3) Failure to comply with this section is a
 misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

"40-5-221. Debt to state by natural--or--adoptive
 parents obligor -- limitations. (1) Except as provided in
 subsection (2), any payment of public assistance money made
 to or for the benefit of any-dependent-child-or--children a
child creates a debt due and owing the state of Montana by
 the responsible-parent-or-parents obligor in an amount equal
 to the amount of public assistance money so paid. In the
 case of an obligor who is an adoptive parent or-parents, no
 a debt for public assistance paid may not accrue prior to
 the date of adoption.

(2) Where--there--has--been--a--district--court--order
 established,--the--debt--shall--be--limited--to--the--amount
 provided--for--by--the--order. If a support order has been

entered, the support debt created by this section may not
 exceed the amount of the order.

(3) Where If a child has been placed in foster care,
 and a written agreement for payment of support has--been
 entered--into--by--the--responsible-parent-or-parents exists
between the obligor and any state agency, the support debt
shall--be is limited to the amount provided for in the
 agreement. However, if a court support order for-support is
 or has been entered, the provisions of the order shall
 prevail over the agreement.

(4) The department shall adopt rules based on ability
 to pay, with respect to the level of support to be provided
 for in such agreements or modifications of such agreements
 based on changed circumstances.

(5) The department may establish and collect a debt
 created under this section in a proceeding that is in
 addition to and independent of the subrogation created by
 40-5-202(7) and the assignment under 53-2-613."

Section 11. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation--to--or
 assignment--of--judgment support order -- notice -- content
contents --action to collect. (1) The department may issue a
 notice of a support debt accrued or accruing based upon
 subrogation--to--or--assignment-of-the-judgment-created-by-a
 district-court a support order. The notice may be served

upon the debtor obligor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within ~~30~~ 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any ~~district-court support order to which the department is subrogated or has an assigned interest;~~

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the debtor obligor is entitled to a fair hearing.

(3) Action to collect the ~~subrogated--or--assigned~~ support debt by distraint and seizure and sale ~~shall be~~ is lawful after ~~30~~ 20 days from the date of service upon the debtor obligor or ~~30~~ 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor obligor may request a fair hearing as provided in 40-5-226."

Section 12. Section 40-5-223, MCA, is amended to read:

"40-5-223. Notice of support liability based upon payment of public assistance -- notice -- contents -- collection warrant -- fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of ~~any--dependent child--or--children~~ a child. The notice of liability ~~shall~~ must be served upon the ~~responsible-parent~~ obligor in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient obligee and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the ~~responsible-parent~~ obligor make answer within ~~30~~ 20 days of the date of service to the department stating defenses to liability under

1 40-5-221;

2 (e) a statement that if no answer is made on or before
3 30 20 days from the date of the service the support debt
4 ~~shall~~ must be assessed and determined subject to computation
5 and is subject to collection action;

6 (f) a statement that the property of the ~~responsible~~
7 parent obligor will be subject to distraint and seizure and
8 sale.

9 (3) If no answer is had by the department to the
10 notice of liability on or before 30 20 days of the date of
11 service, the support debt ~~shall~~ must be assessed and
12 determined subject to the computation and the department may
13 issue a warrant for distraint authorizing a collection
14 action under this part.

15 (4) If the ~~responsible--parent~~ obligor, within 30 20
16 days of the date of service of notice of liability, makes
17 answer to the department alleging defenses to liability
18 under 40-5-221, the ~~responsible-parent~~ obligor may receive a
19 fair hearing pursuant to 40-5-226. The decision of the
20 department in the hearing ~~shall~~ must establish the obligor's
21 obligation ~~of-the-responsible-parent~~, if any, for repayment
22 of public assistance funds spent to date as an assessed and
23 determined support debt."

24 **Section 13.** Section 40-5-224, MCA, is amended to read:

25 "40-5-224. Finding of support liability based upon

1 payment of public assistance -- warrant for distraint --
2 bond to release warrant -- action to collect. (1) If the
3 department reasonably believes that the parent obligor is
4 not a resident of this state or is about to move from this
5 state or has concealed himself, absconded, absented himself
6 or has removed or is about to remove, secrete, waste, or
7 otherwise dispose of property which could be made subject to
8 collection action to satisfy the support debt, the
9 department may issue a warrant for distraint pursuant to
10 40-5-241 during the pendency of the fair hearing or
11 thereafter, whether or not appealed. No further action may
12 be taken on the warrant until final determination after fair
13 hearing ~~and/or~~ or appeal. The department shall ~~in-such-cases~~
14 make and file in the record of the fair hearing an affidavit
15 stating the reasons upon which the belief is founded. The
16 ~~responsible-parent~~ obligor may furnish a bond, not to exceed
17 the amount of the support debt, during pendency of the
18 hearing or thereafter, and in such case warrants issued
19 ~~shall~~ must be released. If the decision resulting from the
20 hearing is in favor of the ~~responsible-parent~~ obligor, all
21 warrants issued ~~shall~~ must be released.

22 (2) The department may commence action under the
23 provisions of this part to collect the support debt on the
24 date of issuance of the decision resulting from the
25 hearing."

Section 14. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice ~~and---finding~~ of financial responsibility ~~of-responsible-parent~~ -- temporary and final support obligations -- administrative procedure. (1) (a) ~~In lieu-of--the--procedures-provided-in-40-5-223-and-40-5-224,~~ the In the absence of a support order, the department may, ~~in--the--absence--of--a--district--court--order,~~ serve on the responsible-parent an obligor with a notice and--finding of financial responsibility alleging a child's need for support and the amount of the need and requiring a-responsible parent the obligor to appear and show cause at a hearing held by the department why the ~~finding-of-liability-and-the amount-of-support-liability-should-not--be--finally--ordered~~ obligor should not be finally ordered to pay the amount alleged in the notice. ~~This-notice-and-finding-shall--relate to--the--support--debt--accrued--or--accruing--under--this--part and/or--Title-53, chapter-4, including periodic--payments--to be--made--in--the--future--for--the--period--of--time--any--child--of the--responsible--parent--is--in--need;--The-hearing-shall-be-held pursuant-to-this-part-and-the-rules-of-the-department, which shall-provide-for-a-fair-hearing;~~

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) ~~The-notice-and-finding-of-financial-responsibility shall-be-served--in--the--same--manner--prescribed--for--the service--of--a--summons-in-a-civil-action,--in--accordance--with the-provisions-of-the-Montana-Rules-of-Civil-Procedure,--Any responsible--parent--who--objects--to--all--or--any--part--of--the notice-and-finding-shall-have-the-right-for-not-more-than-30 days-from-the-date--of--service--to--request--in--writing--a hearing,--notice-of-which-shall-be-served-upon-the-department personally-or-by-registered-or-certified-mail,--If-no-request is--made,--the-notice-and-finding-of-financial-responsibility becomes-final,--if-a-request-is-made,--the-execution-of-notice and-finding-of--financial--responsibility--shall--be--stayed pending-the-decision-on-such-hearing-or-any-direct-appeal-to the--courts--from--the-decision. If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's~~

1 monthly support responsibility must be based on the greater
2 of:

3 (a) the amount of public assistance payable under
4 Title 53, chapter 4; or

5 (b) the alleged need.

6 (3) The notice and finding of financial responsibility
7 shall include:

8 (a) the amount the department has determined the
9 responsible parent owes, the support debt accrued or
10 accruing, and as appropriate, the amount to be paid thereon
11 each month, all computable on the basis of the amount of the
12 monthly public assistance payment previously paid or need
13 alleged and the ability of the responsible parent to pay all
14 or any portion of the debt;

15 (b) a statement of the name of the recipient or
16 custodian and the name of any child for whom assistance is
17 being paid or need is alleged; or a statement of the amount
18 of periodic future support payments for which financial
19 responsibility is found;

20 (c) a statement that the responsible parent may object
21 to all or any part of the notice and finding and request a
22 hearing to show cause why he should not be determined to be
23 liable for any or all of the past and future debt determined
24 and the amount to be paid thereon;

25 (d) a statement that if the responsible parent fails

1 to request a hearing, the support debt and payments stated
2 in the notice and finding, including periodic support
3 payments in the future, shall be assessed, determined, and
4 ordered by the department and that this debt is subject to
5 collection action;

6 (e) a statement that the property of the debtor,
7 without further advance notice or hearing, will be subject
8 to distraint and seizure and sale to satisfy the debt. If
9 the obligor objects to the notice, the obligor shall file a
10 written answer with the department within 20 days from the
11 date of service or refusal of service. If the department
12 receives a timely answer, it shall conduct a fair hearing
13 under 40-5-226. If the department does not receive a timely
14 answer, it shall order the obligor to pay the amount stated
15 in the notice.

16 (4) (a) If a support action is pending in district
17 court and a temporary or permanent support obligation has
18 not been ordered, the department may issue to the obligor a
19 notice of temporary support obligation.

20 (b) The notice must contain:

21 (i) the names of the child and the person or agency
22 having the custodial care of the child;

23 (ii) an amount for temporary monthly support determined
24 as provided in subsection (2);

25 (iii) a statement that the obligor may request a

1 hearing at which the obligor may show that a different
 2 support amount is appropriate or that establishment of a
 3 support obligation is inappropriate under the circumstances.
 4 The hearing must be conducted in accordance with the
 5 procedures of 40-5-226.

6 (iv) a statement that a hearing must be requested in
 7 writing within 10 days of receipt of the notice or the order
 8 for a temporary support order will be entered in the amount
 9 stated in the notice; and

10 (v) a statement that the temporary support order will
 11 terminate upon the entry of a district court support order.
 12 If the district court order is retroactive, any amount paid
 13 for a particular period under the temporary support order
 14 must be credited against the amounts due under the district
 15 court order for the same period, but excess amounts may not
 16 be refunded. If the district court determines that a
 17 periodic support obligation is not proper, any amount paid
 18 under the temporary support order must be refunded to the
 19 obligor.

20 (5) (a) If a temporary support order is entered or if
 21 proceedings are commenced under this section for a married
 22 obligor, the department shall vacate any support order or
 23 dismiss any proceeding under this part if it finds that the
 24 parties to the marriage have:

25 (i) reconciled without the marriage having been

1 dissolved;

2 (ii) made joint application to the department to vacate
 3 the order or dismiss the proceeding; and

4 (iii) provided proof that the marriage has been
 5 resumed.

6 (b) The department may not vacate a support order or
 7 dismiss a proceeding under this subsection (5) if it
 8 determines that the rights of a third person or the child
 9 are affected. The department may issue a new notice under
 10 this section if the parties subsequently separate.

11 (6) Any notice of financial responsibility and the
 12 notice of temporary support obligation must be served in the
 13 same manner prescribed for the service of a summons in civil
 14 action in accordance with the Montana Rules of Civil
 15 Procedure."

16 **Section 15.** Section 40-5-226, MCA, is amended to read:

17 "40-5-226. Administrative hearing -- nature -- place
 18 -- time -- determinations -- failure to appear -- entry of
 19 findings final decision and order. (1) The administrative
 20 hearing is defined as a "contested case".

21 (2) The At the discretion of the hearing officer, the
 22 administrative hearing may be held:

23 (a) in the county of residence or other county
 24 convenient to the responsible-parent obligor or obligee; or

25 (b) in the county in which the department or any of

1 its offices are located.

2 (3) If a hearing is requested, it shall must be
3 scheduled within 30 20 days.

4 (4) The hearing officer shall determine the liability
5 and responsibility, if any, of the ~~alleged-responsible~~
6 ~~parent obligor~~ under 40-5-221-and-shall-also--determine--the
7 ~~amount--of--periodic--payments--to--be-made-to-satisfy-past,~~
8 ~~present,-or-future-liability-under-40-5-221--in-making-these~~
9 ~~determinations,-the-hearing-officer--shall--include--in--his~~
10 ~~consideration--the--scale-of-suggested-minimum-contributions~~
11 ~~adopted-under-40-5-214~~ the notice and shall enter a final
12 decision and order in accordance with such determination.

13 (5) If the ~~responsible-parent~~ obligor fails to appear
14 at the hearing or fails to timely request a hearing, upon--a
15 showing--of--valid--service, the hearing officer, upon a
16 showing of valid service, shall enter a decision and order
17 declaring the ~~support--debt--and-payment-provisions~~ amount
18 stated in the notice and-finding-of-financial-responsibility
19 to--be--assessed,-determined,-and--subject--to--collection
20 action;--Within--30--days--of--entry--of--the--order,-the
21 responsible-parent-may-petition-the-department-to-vacate-the
22 order-upon-a-showing-of-any-of-the-grounds-enumerated-in-the
23 Montana-Rules-of-Civil-Procedure to be final.

24 (6) In a hearing to determine financial
25 responsibility, the monthly support responsibility must be

1 determined in accordance with the evidence presented and
2 with reference to the scale of suggested minimum
3 contributions under 40-5-214. The hearing officer is not
4 limited to the amounts stated in the notice.

5 ~~(6)}~~(7) Within 20 days of the hearing, The the hearing
6 officer shall--within--20--days--of--the--hearing, enter
7 findings,-conclusions,-and--a--final--decision-determining
8 liability-and-responsibility-and/or-future-periodic--support
9 payments a final decison and order. The determination of the
10 hearing officer entered--pursuant-to-this-section-shall-be
11 entered-as-an-order--unless--such--findings--are--set--aside
12 pursuant--to-40-5-253-and-shall-limit-the-support-debt-under
13 40-5-221-to-the-amounts-stated-in-the-decision constitutes a
14 final agency decision, subject to judicial review under
15 40-5-253 and the provisions of the Montana Administrative
16 Procedure Act.

17 ~~(7)}~~(8) The-decision-establishing-liability-and--future
18 periodic--support--payments--is--superseded--upon-entry-of-a
19 district-court-order-for-support-to-the-extent-the--district
20 court--order--is--inconsistent--with--the--hearing-order-or
21 decision--in-the-absence--of--a--district--court--order--the
22 responsible--parent-may-petition-the-department-for-issuance
23 of-an-order-to-appear-and-show-cause-based-on-a--showing--of
24 good--cause--and-material-change-of-circumstances-to-require
25 the-other-party-to-appear-and-show-cause--why--the--decision

1 previously-entered-should-not-be-prospectively-modified.-The
 2 order--to--appear-and-show-cause-together-with-a-copy-of-the
 3 affidavit-upon-which-the-order-is-based-shall-be--served--by
 4 the--petitioning--party-on-the-nonmoving-party-in-the-manner
 5 of-a-summons-in-a-civil-action.-A-hearing-shall-be-set if a
 6 support order is established under this part, any party may
 7 file a verified petition with the department alleging facts
 8 constituting a material change of circumstances. Upon the
 9 filing of such petition, the department shall issue an order
 10 to the nonpetitioning party to appear and show cause why the
 11 decision previously entered should not be prospectively
 12 modified. The order to appear and show cause, together with
 13 a copy of the verified petition, must be served by the
 14 petitioner upon all other parties in the manner provided by
 15 this part. Upon receipt of proof of service, the department
 16 shall schedule a hearing not less than 15 or more than 30
 17 days from the date of service, unless extended for good
 18 cause shown. Prospective modification may be ordered but
 19 only upon a showing of good cause and material change of
 20 circumstances.

21 (8)--The--department--in--its-original-determinations,
 22 and-the-hearing-officer--in-making-determinations--based--on
 23 objections--to--original--determinations--or-on-petitions-to
 24 modify--shall--consider--the--standards--promulgated--for
 25 determination-of-support-payments-used-by-the-district-court

1 of-the-county-of-residence-of-the-responsible-parent-

2 (9) Debts A support debt determined pursuant to this
 3 section--accrued-and-not-paid--are is subject to collection
 4 action under--this-part without further necessity of action
 5 by the hearing officer.

6 (10) A support debt or a support responsibility
 7 determined under this part by reason of the obligor's
 8 failure to request a hearing under this part or failure to
 9 appear at a scheduled hearing may be vacated, upon the
 10 motion of an obligor, by the hearing officer within the time
 11 provided and upon a showing of any of the grounds enumerated
 12 in the Montana Rules of Civil Procedure."

13 Section 16. Section 40-5-241, MCA, is amended to read:

14 "40-5-241. Warrant for distraint. (1) Thirty-one
 15 Twenty-one days after receipt or refusal of a notice of a
 16 support debt under provisions of 40-5-222 or 31 21 days
 17 after service of notice of a support debt or as otherwise
 18 appropriate under the provisions of 40-5-223 and 40-5-224,
 19 the department may issue a warrant for distraint based on
 20 the amount of the support debt.

21 (2) The warrant is subject to the provisions of this
 22 part and the provisions of 15-1-701, 15-1-704, 15-1-708, and
 23 15-1-709, with references to "tax" taken to mean "support
 24 debt" and references to "taxpayer" taken to mean "person
 25 owing--the--support-debt"--as-well-as-the-provisions-of-this

1 part "obligor".

2 **Section 17.** Section 40-5-242, MCA, is amended to read:

3 "40-5-242. Civil liability upon failure to comply with
4 warrant or to honor assignment of wages. Should-any--person,
5 firm--corporation--association--political-subdivision--or
6 department-of-the-state-fail-or-refuse-to--deliver--property
7 pursuant-to-the-order--or-after-actual-notice-of-filing-of-a
8 support--lien--pay-over--release--sell--transfer--or-convey
9 real-or-personal-property-subject-to-a-support--lien--to--or
10 for--the--benefit-of-the-debtor-or-any-other-person--or-fail
11 or-refuse-to-surrender-upon-demand-property-distrained-under
12 40-5-241-or-fail-or-refuse-to-honor-an-assignment--of--wages
13 presented---by---the---department--the A person, firm,
14 corporation, association, political subdivision, or
15 department of the state is liable to the department in an
16 amount equal to 100% of the value of the support debt which
17 that is the basis of the distraint or assignment of wages or
18 the value of the distrained property, whichever is less,
19 together with costs, interest, and reasonable attorney fees,
20 if the person or entity:

21 (1) fails or refuses to deliver property pursuant to
22 the order;

23 (2) pays over, releases, sells, transfers, or conveys
24 real or personal property subject to a support lien, to or
25 for the benefit of the obligor, after the person or entity

1 receives actual notice of filing of the support lien;

2 (3) fails or refuses to surrender upon demand property
3 distrained under 40-5-241; or

4 (4) fails or refuses to honor an assignment of wages
5 presented by the department."

6 **Section 18.** Section 40-5-243, MCA, is amended to read:

7 "40-5-243. Release of excess to debtor obligor.
8 Whenever If any person, firm, corporation, association,
9 political subdivision, or department of the state has in its
10 possession earnings, deposits, accounts, or balances in
11 excess of the amount of the debt claimed by the department
12 plus \$100, that person--firm--corporation--association--
13 political-subdivision--or-department-of-the-state or entity
14 may--without--liability-under-this-part; release the excess
15 to the debtor obligor without liability under this part."

16 **Section 19.** Section 40-5-244, MCA, is amended to read:

17 "40-5-244. Banks and savings and loan associations --
18 service effective only as to branch office served. In the
19 case of a bank, bank association, mutual savings bank, or
20 savings and loan association maintaining branch offices,
21 service of any notice or document authorized by this part is
22 only effective as to the accounts, credits, or other
23 personal property of the debtor obligor in the particular
24 branch upon which service is made."

25 **Section 20.** Section 40-5-246, MCA, is amended to read:

1 "40-5-246. Release of distraint and return of seized
2 property -- effect. The At any time, the department may at
3 any-time release a distraint on all or part of the property
4 of the debtor obligor or order the return of seized property
5 without liability, if assurance of payment is determined to
6 be adequate by the department or if the action will
7 facilitate the collection of the debt. The release or return
8 does not operate to prevent future action to collect from
9 the same or other property."

10 **Section 21.** Section 40-5-251, MCA, is amended to read:

11 "40-5-251. Debt payment schedule. The At any time
12 after notice to the obligor, the department may at-any-time
13 after-notice-to-the-debtor set or reset a level and schedule
14 of payments to be paid upon the debt consistent with the
15 income, earning capacity, and resources of the debtor
16 obligor."

17 **Section 22.** Section 40-5-252, MCA, is amended to read:

18 "40-5-252. Interest on debts due -- waiver. (1)
19 Interest The department may collect interest on any support
20 debt due and owing to the department it at the statutory
21 interest rate payable on judgments recovered in the courts
22 of this state under--40-5-221--may--be--collected--by-the
23 department.

24 (2) No provision of this part may be construed to
25 require the department to maintain interest balance due

1 accounts, ~~and interest may be waived by the department,~~ The
2 department may waive interest if waiver would facilitate the
3 collection of the debt."

4 **Section 23.** Section 40-5-253, MCA, is amended to read:

5 "40-5-253. Administrative findings and order --
6 administrative remedies -- judicial review. (1) It is the
7 intent of this part that administrative findings and orders
8 be subject to judicial review, but ~~that~~ administrative
9 remedies must be exhausted prior to judicial review. The
10 administrative procedures described in this part are subject
11 to review in the appropriate district court. Such review
12 shall must be conducted pursuant to the Montana
13 Administrative Procedure Act. Upon a showing by the
14 department that administrative remedies have not been
15 exhausted, the district court shall refuse review until such
16 remedies are exhausted.

17 (2) Nothing in this part may be construed to abridge
18 or in any way affect the defendant's obligor's right to
19 counsel during any and all judicial or administrative
20 proceedings pursuant to this part."

21 **Section 24.** Section 40-5-254, MCA, is amended to read:

22 "40-5-254. Statutory limitations. Debts Support debts
23 ensuing as a result of determinations made through the
24 administrative procedures described in this part are subject
25 to statutory limitations as set forth in Title 27, chapter

2."

Section 25. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from ~~a-responsible-parent-or-former-spouse~~ an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. ~~In-the-event~~ If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 26. Section 40-5-257, MCA, is amended to read:

"40-5-257. Assignment of earnings to be honored --

effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing ~~a-person-owing-a-support-debt-or-obligation~~ an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to ~~court~~ a support order, presented by the department ~~as--a-plan--to~~ satisfy--or--retire--a--support--debt--or--obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department ~~shall--be~~ is released from liability for improper receipt of money under an assignment of earnings upon return of any money so received."

Section 27. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 28. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid

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1 part remain in effect. If a part of [this act] is invalid
2 in one or more of its applications, the part remains in
3 effect in all valid applications that are severable from the
4 invalid applications.

-End-

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to the administrative enforcement of child support to conform the laws to federal regulations; providing an automatic extension of services upon termination of public assistance; granting equal status to non-public assistance cases; decreasing the response times for administrative procedures; and providing for temporary support orders.

ASSUMPTIONS:

1. In FY90 the nonpublic assistance child support enforcement caseload will increase by 2,900 cases above current levels and in FY91 the increase will be 4,900 cases above current levels.
2. The public assistance caseload for which health insurance will be purchased will be 233 in FY90 and 242 in FY91 based on the following assumptions:
 - a. Total AFDC caseload will be 9,868 in FY90 and 10,263 in FY91.
 - b. Of the total cases, 42% will be women with children whose paternity has been established.
 - c. Thirty percent of the AFDC cases where paternity is established will receive child support.
 - d. Employer group health insurance could be provided in 25% of the cases where paternity has been established but of the number that could provide insurance only 75% will provide such coverage. The remainder of the absent fathers (78 in FY90 and 81 in FY91) will be assessed the \$100 monthly fee.
 - e. There are two children per AFDC case.
3. Private health insurance will cover only 60% of the health care costs covered by Medicaid. The state will still fund dental and drug health coverage for AFDC cases where health insurance is provided by the absent father.
4. The average Medicaid cost per AFDC child is \$750 per year.
5. The Department of Revenue will impose and collect the \$100 fee for nonpayment of health insurance costs.
6. The Department of Revenue will need 6.0 FTE in FY90 (2.0 FTE at grade 9 and 4.0 FTE at grade 12).
7. The Department of Revenue will need an additional 4.0 FTE in FY91 (2.0 FTE at grade 9 and 2.0 FTE at grade 12) for a total of 10.0 new FTE in FY91.
8. The federal government will pay 68% of the administrative costs until October, 1989, and 66% after that time.
9. Federal government incentive payments will be 7% of collections or \$63,530 in FY90 and \$107,345 for FY91.
10. Noncompliance with this requirement could result in sanctions from 1% to 5% of the federal share of AFDC program funds. If a 1% sanction is applied, it would represent a reduction of \$270,663 in federal AFDC funding while a 5% sanction would represent a reduction of \$1,353,314 in funding. It is assumed that the proposal will allow the state to avoid federal sanctions in the areas referenced by this proposal.

Ray Shackelford

11/11/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dorothy Eck

DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB042, Introduced

SB 42

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY90</u>			<u>FY91</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
SRS						
Benefits	\$ 209,700	\$ 0	(\$209,700)	\$217,800	\$ 0	(\$217,800)
Revenue						
Personal Services	0	124,129	124,129	0	203,940	203,940
Operating Expense	0	60,664	60,664	0	83,020	83,020
Capital Outlay	0	12,793	12,793	0	0	0
TOTAL	\$ 209,700	\$ 197,586	(\$ 12,114)	\$217,800	\$ 286,960	\$ 69,160
<u>Funding:</u>						
General Fund	\$ 60,457	\$ 66,024	\$ 5,567	\$ 62,530	\$ 97,566	\$ 35,036
Federal Funds	149,243	131,562	(17,681)	155,270	189,394	34,124
TOTAL	\$ 209,700	\$ 197,586	(\$ 12,114)	\$217,800	\$ 286,960	\$ 69,160

Revenue Impact:

General Fund:						
Federal Incentive Payment	\$ 0	\$ 63,530	\$ 63,530	\$ 0	\$ 107,345	\$107,345
Health Insurance Sanctions	0	46,800	46,800	0	95,400	95,400
TOTAL	\$ 0	\$ 110,330	\$ 110,330	\$ 0	\$ 202,745	\$202,745

<u>Net General Fund Impact:</u>		\$ 104,763		\$133,585
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Mr. Nichols replied that the agreement does apply to Canada and Indian reservations. The agreement is binding and all carriers automatically become members when Montana joins. Truckers would only have to file their quarterly report with the base state, not every other state in which they do business. Montana would then disburse the funds to other states.

Senator Harp said it is anticipated the number of reports the state will deal with will drop from approximately 14,000 to 1,400 (based on projections from Idaho) when we go to a base state formula. Mr. Nichols said there are about 900 users who would qualify under the agreement in Montana.

Senator Severson asked if paperwork would decrease.

Mr. Nichols felt the only increase would be in the distribution of funds. There would be no increase in audit duties, in fact, it would eliminate the out-of-state audit process.

Senator Gage inquired about a Statement of Intent.

Senator Brown asked Jeff to get one.

Closing by Sponsor:

Senator Harp closed the hearing on Senate Bill 30.

HEARING ON SENATE BILL 42

Presentation and Opening Statement by Sponsor:

Senator Eck, District 40, sponsor, said the bill was requested by the Department of Revenue to bring Montana's child support laws into conformance with the federal regulations. It has also been reviewed by the Revenue Oversight Committee.

The bill addresses several child support enforcement services. The first is an automatic continuation of child support services upon termination of public assistance. Previously this was done only by request. This provision will increase duties and services provided by the Child Support Enforcement Bureau.

The second provision provides equal status to non-public assistance cases. For the most part, that is happening now in Montana.

Third, the bill decreases the response time for administration procedures and speeds up the system. It cuts the time from a 30 day response to 20 days, 20 days being quite standard.

Fourth, the bill provides for temporary support orders. Senator Eck said the key change in the bill is in Section 3, page 10, subsection 4, which deals with continuing child support assistance after termination of public assistance. The rest of the changes are mostly semantic.

She asked the lawyers on the committee to double check Section 17 to be sure of the wording in the civil liability area.

The Department of Revenue is considering some sort of educational program in the schools and universities which would be aimed at young people and their responsibilities in case of pregnancies.

List of Testifying Proponents and What Group they Represent:

Brenda Nordlund, Montana Women's Lobby
John McRae, Attorney, Child Support Enforcement
Division
Ken Nordtvedt, Director of the Department of Revenue
Christine Deveny, League of Women voters

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Brenda Nordlund, represented the Montana Women's Lobby, and presented testimony in support of the bill (Exhibit 6).

John McRae, Attorney with the Child Support Enforcement Division of the Department of Revenue, said 87% of all AFDC households are headed by women who are on AFDC because the fathers are not supporting the family. Across the United States, that accounts for 88 million women; only 61% of the 88 million get any court ordered support. Of the 61% only 26% received partial payments. The remaining 26% do not receive anything, which means 52% have problems getting any of the support they are supposed to have. In 1956 the total federal AFDC benefits paid out were \$6.17 million. By 1982 it was \$12 million. The welfare problems today are to a great extent a problem of non-support.

Congress, in 1974, enacted Title 40 of the Social Security Act, which establishes child support enforcement programs. In 1983 \$2 billion was collected in support monies. However, \$4 billion was due and owing by court orders so the effort was still floundering. In respect to the growing problem, Congress became more insistent and amended Title 40 and gave the states new mandatory rules to use. Failure to use them could result in 1%-5% sanctions of the federal AFDC funds being allocated to the individual states. As a result, in 1985, the legislature passed several bills, including the income withholding bill. This bill is a further effort to toughen Montana support laws and to conform to federal guidelines that were adopted after the 1985 session.

House Bill 42 is looking at Part 2, Chapter 5 of Title 40. This is the 4D Program framework for Montana. One of the elements is all states must have an expedited process for establishing paternity. This process requires that 90% of the cases must be completed within 90 days of the commencement of the case. In order to accomplish this, which becomes very difficult with crowded court dockets, etc., the response times have been decreased from 30 to 20 days. This will leave the state more time for completion of the case. Twenty days is the usual response time used by district courts in their other legal actions, such as summons or complaints.

Section 40-5-225 is being amended to provide the same assistance to non-welfare people in an effort to keep them from becoming welfare cases. Montana does provide free assistance in this area currently and this cleans up the bill language and makes the definitions generic. It is hoped a 20% savings can be attained. The Legislative Council has done a lot of cleanup work and the bill itself allows Montana to meet well the federal regulations regarding child support.

Ken Nordtvedt, Director of the Department of Revenue said if the committee feels the federal government is putting a gun to their heads; they are probably right. He urged the committee to scrutinize the bill closely for mandated and discretionary duties and to check the fiscal implications.

Christine Deveny, League of Women Voters, presented her testimony in support of the bill (Exhibit 7).

Questions From Committee Members:

Senators Norman and Harp asked what the AFDC budget is and what impacts complying with this bill would have.

Dennis Shober, Child Support Enforcement Bureau, replied that for fiscal year 1988, the AFDC budget was \$38,326,657. 70.62% of that AFDC budget was federal funds, which is \$27,660,00. If the sanctions are imposed by the federal government, non-compliance would cost approximately \$270,000 annually at 1%, but it could go up to 5%.

Estimated case load increase would be approximately 2,900 cases annually, compared to 18,172 cases handled by 51 employees. The average monthly AFDC caseload across Montana is 9200, which breaks down to approximately 1200-1500 cases per case worker.

Senator Mazurek asked about the changes in Section 17, which is the civil liability issue.

Mr. Shober said it is the same as it has always been. The only changes are semantic and make no substantive change at all.

Senator Eck asked how the Montana caseload compares nationally.

Mr. Shober said Montana has one of the highest in the nation. The national average is about 500.

The federal government rewards Montana for being a cost effective program. Last year the total bureau costs were \$1,810,000. The total state cost was a net profit of \$656,000 from this one program because of reimbursement they get per dollar collected on a public assistant dollar, plus how cost effective the program is. The more money returned per dollar spent, the higher the incentive ratio. The net state incentive last year was \$431,000. They returned \$2.17 for every general fund dollar spent.

Senator Gage felt the bill needed a fiscal note.

Senator Norman asked if the AFDC program is cost effective.

Mr. Shober replied they are returning 11% of the AFDC funds to the general fund.

Senator Mazurek asked if page 10, line 16 would mandate the Department to provide enforcement services forever. He wondered if there would be circumstances where it should be discretionary.

Mr. McRae said this follows the federal premise that states will continue their enforcement programs and that people will continue to receive services as long as they need and want them. He said it could be discretionary without a penalty.

Senators Norman, Crippen and Gage felt there should be a Statement of Intent attached to the bill.

Closing by Sponsor: Senator Eck closed.

ADJOURNMENT

Adjournment At: 10:00 a.m.



Senator Bob Brown, Chairman

BB/jdr

min104jr.pb

MONTANA WOMEN'S LOBBYIST

FUND

P.O. Box 1099

Helena, MT 59624

406/449-7917

SENATE JOURNAL

EXHIBIT NO.

6

DATE

1/4/89

BILL NO.

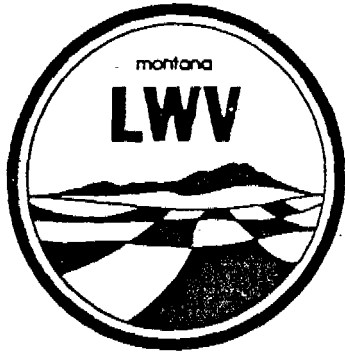
SB 42

Mr. Chairman and committee members,

My name is Brenda Nordlund and I am a lobbyist for the Montana Women's Lobby, formerly Women's Lobbyist Fund..

We support any efforts to make child support enforcement more effective and efficient and less onerous for obligees. Child support and support enforcement ~~are~~ one of our top priorities.

We support Senate Bill 42. The provisions of Section 3 of this bill are particularly important as they enhance child support enforcement service for non-public assistance obligees and automatically extend such services for obligees upon termination of public assistance. Each measure may help to ensure that fewer women and children will be relegated to poverty as a result of non-payment of child support.



SENATE JUNCTION

EXHIBIT NO. 7

DATE 1/4/89

FILE NO. SB 42

Senate Bill 42
Senate Taxation Committee
January 4, 1989
LWVM Contact: Chris Deveny
442-2617

Mr. Chairman, members of the committee, my name is Christine Deveny, here today representing the League of Women Voters of Montana, and here to support Senate Bill 42.

In keeping with its historic involvement with the issue of child welfare, the National League of Women Voters recently completed an extensive study of the unmet needs of our nation. The study results emphatically illustrate the inability of our nation's current social welfare system to address the problems of inadequate income, food, housing and health care. It draws attention to the sad facts that nearly one in four children in the U.S. live below the poverty line, and that only one-third of all single mothers receive the full amount of their court-awarded child support. Households headed by single mothers make up a large sector of the poor in this country and in Montana, and are the families most dependant on regular child support payments.

While revising Montana's laws regarding child support to conform with new federal welfare regulations, Senate Bill 42 takes a positive step toward ensuring that non-custodial parents meet their financial responsibilities toward the support of their dependant children, regardless of whether those children are or have been recipients of public assistance.

The League strongly supports Section (3) of SB 42, allowing the Department to provide child support enforcement services to persons who are no longer, or have never been, recipients of public assistance. Not only will these provisions ensure that regular child support payments continue, but they will also reduce the need for additional public assistance that could be required if child care support payments ceased or became erratic as a result of no enforcement. Public assistance monies saved would then be available for others in need.

The League supports decreasing the response time for administrative procedures, and the use of temporary support orders. These provisions will help speed the process of obtaining child support payments within a reasonable time frame, without abridging the rights of those who wish to question or protest child support obligations or requirements.

The League recommends passage of Senate Bill 42.

Jun. 4, 1989

~~TAXATION~~

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

TAXATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1/4/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

The motion CARRIED unanimously.

Senator Mazurek felt the language currently in statute regarding delinquencies is perfectly clear. It says if you have a delinquency and you want to pay less than the full delinquency, as long as you pay the full amount of the current taxes, you can go back and pay any one year of the delinquency. He said you will always pay for two years, so slowly you are gaining. He said this was a good faith resolution to a very hot issue last session.

He also felt somewhat disgusted that the law isn't being applied as it was a very delicate issue and throwing it out (i.e. the Attorney General's decision) is a breach of faith with the members of the Senate.

Mr. Harrington felt it is perfectly clear, also. He said the Attorney General reached his opinion in a vacuum, and said it was intended that all the delinquencies must be paid before the current year could be paid. That was not the compromise and it is not necessary to clarify it again.

Senator Crippen reviewed the process again and said he felt it should be addressed in this bill even though Representative Hannah has a bill in to do this. He asked Jeff Martin to look into it.

The committee decided to hold the bill for a bit while Senator Mazurek and Jeff Martin discuss what to do with it.

DISPOSITION OF SENATE BILL 42

Discussion: Senator Eck presented the revised fiscal note to the committee (Exhibit 2). It shows there are costs incurred, but they are covered by federal payments and incentives.

Senator Gage asked how 10 FTE's could be funded with \$110,000.

Mr. Wallace, Department of Revenue, said the fiscal note only reflects the Montana share and the federal dollars will make up the difference.

Amendments and Votes: Senator Crippen moved to amend the

bill on page 10, line 18, striking "shall" and inserting "may"; and on page 10, line 25, striking "only".

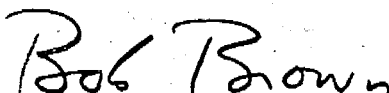
The motion CARRIED with Senators Harp and Halligan voting no.

Senator Gage still had some concern about the FTE's, but said he would get the information himself to use on the floor.

Recommendation and Vote: Eck moved Senate Bill 42 DO PASS AS AMENDED. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:00 a.m.



SENATOR BOB BROWN, Chairman

BB/jdr

min118jr.sr

ROLL CALLTAXATION

COMMITTEE

5054 LEGISLATIVE SESSION -- 1989

Date 1/18/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	x		
SENATOR CRIPPEN	X		
SENATOR ECK	x		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 18, 1999

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 42 (first reading copy -- white), respectfully report that SB 42 be amended and as so amended do pass:

1. Page 10, line 18.

Strike: "shall"

Insert: "may"

2. Page 10, line 25.

Strike: "only"

AND AS SO AMENDED DO PASS

Signed: _____

Bob Brown, Chairman

Statement of Intent attached.

4.C.
1/19/89
10:25
A.M.

STATEMENT OF INTENT

Senate Bill 42

A statement of intent is required for Senate Bill No. 42 because it amends several sections within Title 40, chapter 5, part 2, on child support enforcement services. These amendments are proposed to bring state law into compliance with federal law. The department of revenue is granted an extension of authority to adopt rules in accordance with this bill that conform with federal laws and regulations.

The legislature intends that the department adopt rules that:

(1) reduce Aid to Families With Dependent Children (AFDC) expenditures by ensuring that the parent or other person responsible pays for the care, support, or maintenance of a child under the provisions of 40-5-202, (1);

(2) ensure child enforcement services will continue to be provided to families that cease to receive public assistance under AFDC, without requiring an application or payment of a fee;

(3) establish the terms and conditions of providing continued services for families no longer receiving public assistance; and

(4) establish procedures for the discontinuance of child support services when the custodial parent:

(a) ceases or fails to cooperate with the department as provided under 40-5-204; or

(b) takes an action to prejudice the rights of the department under 40-5-202 (4) and (5).

11/10/89
BILL NO. SB42

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB042 (revised fiscal note), as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to the administrative enforcement of child support to conform the laws to federal regulations; providing an automatic extension of services upon termination of public assistance; granting equal status to non-public assistance cases; decreasing the response times for administrative procedures; and providing for temporary support orders.

ASSUMPTIONS:

1. The first year the non-public assistance caseload will increase by 2900 cases above current levels.
2. The second year the non-public assistance caseload will increase by 4900 cases above current levels.
3. At 500 cases per FTE, there will be 6 additional FTE the first year; 2 at grade 9 and 4 at grade 12.
4. Four more FTE will be required the second year; 2 at grade 9 and 2 at grade 12; for a total of 10 new positions.
5. These positions will be hired at step 2; there will be no wage increase in the biennium; fringe benefits will be 21.94% the first year and 22.23% the second year.
6. There will be a one-time data processing cost of \$11,200 to change the system. This will be done in the first quarter of FY90.
7. The federal government covers 68% of total administrative costs until October, 1989; after that time the federal government will cover 66% of costs. (The additional administrative expense shown below reflects the state portion only.)
8. Department collections will be \$907,577 the first year and \$1,533,498 the second year.
9. Federal government incentive payments (these are based on cost-effectiveness ratios) will be 7% of collections, or \$63,530 for the first year and \$107,345 for the second year.
10. Under current law the department does not provide medical support obligation enforcement, and would not under the proposed law.
11. Noncompliance with this requirement could result in IV-A federal funding graduated sanctions ranging from 1% to 5%. If a 1% sanction is applied, it would represent a reduction of \$270,663 in federal AFDC funding. If a 5% sanction is applied, it would represent a reduction of \$1,353,314 in funding. It is assumed the proposal will allow the state to avoid federal sanctions in the areas referenced by this proposal.


RAY SHACKLEFORD, DIRECTOR DATE 1/17/89
Office of Budget and Program Planning

DOROTHY ECK, PRIMARY SPONSOR DATE
Fiscal Note for SB042, as introduced

Ex #2 pg. 2
1/18/89
SB42

FISCAL IMPACT:Revenue Impact:FY '90

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Fed. Govt. Incentive Payment		
\$ 0	\$ 63,530	\$ 63,530

FY '91

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
\$ 0	\$ 107,345	\$ 107,345

Expenditure Impact:FY '90

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services		
\$ 0	\$ 41,478	\$ 41,478
Operating Expense		
0	20,271	20,271
Capital Outlay		
0	4,275	4,275
TOTAL	\$ 66,024	\$ 66,024

FY '91

<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
\$ 0	\$ 69,340	\$ 69,340
0	28,227	28,227
0	0	0
\$ 0	\$ 97,566	\$ 97,566

Closing by Sponsor: Sen. Eck closed by saying that this is a necessary step in tightening up the system.

DISPOSITION OF SENATE BILL 22

Motion: Rep. Nelson moved SB 22 BE CONCURRED IN, motion was seconded by Rep. Rice.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion SB 22 BE CONCURRED IN and CARRIED unanimously.

HEARING ON SENATE BILL 42

Presentation and Opening Statement by Sponsor:

Sen. Dorothy Eck opened the hearing on SB 42 stating that this bill provides a number of new initiatives, all of which are required by the federal government. The first thing it does is automatically extends the services whenever someone on AFDC goes off. Secondly, it grants equal status to non-public assistance cases. It also increases the response time. The bill provides for temporary support orders. There's also a provision that health insurance or medical support be provided for in an order. This bill provides many new initiatives and new authority for the department. Sen. Eck distributed an amendment proposal in response to a review of the legislation by the Denver office (EXHIBIT 2). This would require a modification of some support orders when necessary.

Testifying Proponents and Who They Represent:

John McCrea, Child Support Enforcement Program
Christine Deveny, Montana League of Women voters
Julie Robinson, Director of Social and Rehabilitation Services
Ann Larson, Private Citizen
Brenda Nordlund, Montana Womens Lobby

Proponent Testimony:

John McCrea told the committee this bill flows from federal regulations. 1984 amendments require the state to have an expedited form to achieve child support enforcement and establish support obligations. Montana has had an administrative process since 1979; however, when that was enacted, all the effort at that time was going toward AFDC cases. The activities that were going to non AFDC services were minimal. Since the 1984 amendments, the federal government has given equal rights to both parties, welfare

cases and non-welfare cases. The intent is that by providing non-welfare services, perhaps they can keep families off welfare. In order to provide this equalization of services, it was necessary to make numerous changes. The expediting process as required by the federal government also requires that 90% of the cases be completed within 90 days of the commencement of the case. The 30 day response time that was built into the system made it very hard to do that. The proposal is to reduce the 30 day response time to 20 days which is the same response time that is commonly found in all civil cases throughout the court system. Another change is the provision for extended services. SB 42 provides an administrative remedy to allow support services while the district court is in the process of making a decision.

Christine Deveny spoke in favor of SB 42 (EXHIBIT 3).

Julie Robinson stated that Governor Stephens is interested in reducing dependency and empowering the Montana families. That is what the package of child support bills do. Parents have a responsibility to support their children.

Ann Larson testified in support of SB 42. She told the committee she feels she represents the majority of divorced women in the state. She said she works for a living, is not on welfare and doesn't always receive her child support. This is the same child support that a judge determined was necessary to support the children. She stated that the last four years since the divorce have not been easy for her. She put herself through college while working full time and took care of the children. Whether she receives child support from her husband is up to him. If he doesn't feel like paying, he doesn't. On more than one occasion, Ms. Larson contacted the Child Support Enforcement Bureau. Because she is not on AFDC, the bureau could not help her collect her delinquent child support. This doesn't mean she can get by without the money. Child support is not a bonus or a luxury, it is her husband's share of the cost of raising their children. Divorce does not end this obligation. She cannot afford to go to a lawyer. She doesn't feel she should have to be destitute to receive help from the state in receiving child support payments which are legally owed to her.

Brenda Nordlund stated that she would like to go on record as supporting SB 42.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski asked John McCrea if he had a feel for how well they are tightening up child support along medical lines in helping to decrease the medicaid caseload in AFDC recipients. Mr. McCrea responded that the best way to illustrate the trend of the effectiveness of the program is by the dollar collections. Dennis Shover provided dollar statistics and stated that they are required to establish medical support obligations in cases where there is not an obligation established for medical support.

Closing by Sponsor: Sen. Eck stated that this bill will also help decrease the number of teenage pregnancies. If you present to young men that if they cause a pregnancy, it could cost them \$250 a month for the next 18 years, it makes an impact that moralizing can never make. That may mean no car, no skiing, a restriction on educational abilities and other things that hit home. The perception and cavalier attitude we have seen among people will be reduced. There will be a real recognition of the responsibilities of parenthood. Not all of the responsibilities are financial, but the financial obligations are a big part of it.

DISPOSITION OF SENATE BILL 42

Motion: Rep. Stickney moved SB 42 BE CONCURRED IN, motion seconded by Rep. Darko.

Discussion: Rep. Darko commented that Julie Robinson had an amendment prepared for the bill. Rep. Addy explained that this amendment would allow the Governor to transfer child support enforcement duties to the Dept. of Social and Rehabilitation Services.

Amendments, Discussion, and Votes: Rep. Mercer moved amendments proposed by the Dept. of Revenue, motion seconded by Rep. Stickney. Motion CARRIED unanimously.

Rep. Daily stated that the bill should be held until the committee is really sure what the Governor's amendment is. Rep. Addy ruled that amendment out of order as it was brought in after the hearing. Rep. Daily said the amendment will be proposed on the floor anyway and the committee needs to know what it is.

Rep. Strizich moved a clerical amendment to the statement of intent. Rep. Wyatt seconded the motion. The amendment would refer to child support enforcement services in sub 2 and sub 4.

Motion on Rep. Strizich's amendment CARRIED unanimously.

Rep. Strizich moved to amend the statement of intent into the bill. Rep. Wyatt seconded the motion.

Rep. Daily moved to TABLE SB 42. Motion FAILED with Rep.'s Daily and Eudaily voting Aye.

Recommendation and Vote: Rep. Brooke moved SB 42 BE CONCURRED IN AS AMENDED, motion seconded by Rep. McDonough. Question was called for on the motion and CARRIED with a unanimous vote.

HEARING ON SENATE BILL 145

Presentation and Opening Statement by Sponsor:

Sen. Eck stated that SB 145 makes it clear that veteran's social security legislation benefits based upon remuneration for employment are not exempt from execution if the debt for which execution is levied for child support. You cannot withhold child support money from a check from the veteran's administration of from social security. However, those can be considered in making a judgment for an award. This just clarifies that it is possible to go after those monies. In speaking to veteran's groups, they have no problem with this bill.

Testifying Proponents and Who They Represent:

Brenda Nordlund, Montana Womens Lobby
George Poston, Disabled Veterans
John DenHerder, Montana Disabled Veterans

Proponent Testimony:

Brenda Nordlund told the committee that the Montana Womens Lobby believes that to the extent that federal law allows such execution or garnishment of veterans or social security benefits, that this bill should be supported. That class of child support obligers should be equally responsible to support those children as those who are not receiving such benefits.

George Poston said when he was assured that disabled veterans would be exempt under the U.S. Codes, the disabled veterans turned from opponent to proponent. He stated they are now in favor of SB 145 as it is written.

John DenHerder said he endorses paying child support debts.

Testifying Opponents and Who They Represent:

None.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 10, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN			X

EXHIBIT 2
DATE 3-10-89
53 42

Proposed Amendment to SB42
Amending Third Reading (Blue) Copy

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS; PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-208, 40-5-201 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND 40-5-257, MCA."

NEW SECTION. Section 29. Section 40-4-208, MCA, is amended to read:

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains

provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties; or

(iii) upon application by the department of revenue, whenever it is providing services under Title IV-D of the Social Security Act. The support obligation must be modified, as appropriate, in accord with the guidelines promulgated pursuant to section 3 of SB129. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just

EXHIBIT 2
DATE 3-10-89
H3 SB 42

and appropriate in the circumstances.

NEW SECTION Section 30. Coordination Instruction. If
section 3 of SB129 is not enacted, section 29 of this act is
void.

EXHIBIT 3
DATE 3-10-89
SB. 42



Senate Bill 42
House Judiciary Committee
March 10, 1989
LWVM Contact: Chris Deveny
442-2617

Mr. Chairman, members of the committee, my name is Christine Deveny, here today representing the League of Women Voters of Montana, and here to support Senate Bill 42.

In keeping with its historic involvement with the issue of child welfare, the National League of Women Voters recently completed an extensive study of the unmet needs of our nation. The study results emphatically illustrate the inability of our nation's current social welfare system to address the problems of inadequate income, food, housing and health care. It draws attention to the sad facts that nearly one in four children in the U.S. live below the poverty line, and that only one-third of all single mothers receive the full amount of their court-awarded child support. Households headed by single mothers make up a large sector of the poor in this country and in Montana, and are the families most dependant on regular child support payments.

While revising Montana's laws regarding child support to conform with new federal welfare regulations, Senate Bill 42 takes a positive step toward ensuring that non-custodial parents meet their financial responsibilities toward the support of their dependant children, regardless of whether those children are or have been recipients of public assistance.

The League strongly supports Section (3) of SB 42, allowing the Department to provide child support enforcement services to persons who are no longer, or have never been, recipients of public assistance. Not only will these provisions ensure that regular child support payments continue, but they will also reduce the need for additional public assistance that could be required if child care support payments ceased or became erratic as a result of no enforcement. Public assistance monies saved would then be available for others in need.

The League supports decreasing the response time for administrative procedures, and the use of temporary support orders. These provisions will help speed the process of obtaining child support payments within a reasonable time frame, without abridging the rights of those who wish to question or protest child support obligations or requirements.

The League recommends passage of Senate Bill 42.

Judiciary

DATE March 10

CS-33

STANDING COMMITTEE REPORT

March 10, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 42 (third reading copy -- blue), with statement of intent attached, be concurred in as amended .

Signed: _____
Kelly Addy, Vice-Chairman

[REP. DARKO WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 12.

Following: "SECTIONS"

Insert: "40-4-208,"

2. Page 1, line 16.

Insert: Statement of Intent attached to the bill.

3. Page 1, line 19 of Statement of Intent.

Following: "child"

Insert: "support"

4. Page 2, line 2 of Statement of Intent.

Following: "support"

Insert: "enforcement"

5. Page 38, line 21.

Following: line 20

Insert: "Section 27. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection

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(1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties; or

(iii) upon application by the department of revenue, whenever the department of revenue is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under [section 3 of Senate Bill No. 129]. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Renumber: subsequent sections

6. Page 38, line 25.

Following: line 24

Insert: "NEW SECTION. SECTION 29. Coordination instruction. If [section 3 of Senate Bill No. 129] is not passed and approved, [section 27 of this act] is void."

Renumber: subsequent section